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Date 25 Jan 2002Number of pages 3 (including cover page)to: Name Renata B. Hessefrom: Name David A. WheelerCompany U.S. Dept. of JusticeCompany (self)

Telephone _____

Telephone 703-250-7047Fax 1-202-616-9937**Comments**

I am strongly opposed to the proposed final judgment in U.S. vs. Microsoft; there is no effective penalty & nothing to prevent similar future activities. These comments (enclosed), which expand on this, are pursuant to the Tunney Act.

January 24, 2002

Dear Renata Hesse:

I am **strongly opposed** to the proposed final judgment in United States vs. Microsoft. Microsoft has been clearly convicted of illegal actions, and this is the penalty phase. Yet there is **no effective penalty** in the proposed final judgment, and in particular, **nothing to prevent similar future activities**. The proposed "remedies" are easily circumvented, indeed, they seem to be carefully crafted to ease circumvention! For example, APIs involving security need not be disclosed, so clearly Microsoft will simply re-label or modify many APIs to be security-relevant and thus circumvent the judgment. Microsoft has clearly harmed the computer industry and the consumer, robbing U.S. citizens of many innovative products, simply because so many organizations are now afraid to compete with Microsoft. Some have even been eliminated by Microsoft's illegal activities. A remedy must end these activities.

In addition to the current judgment, I believe that any remedy must ensure that there will be unfettered public access to all information necessary for interoperability. *All* interfaces, not just certain APIs, must be made public. Thus, in addition to the current judgment:

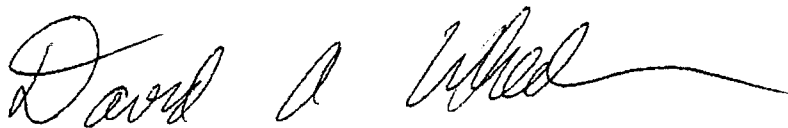
1. The specifications of Microsoft's present and future document file formats must be made completely public, so that documents created in Microsoft applications may be read and written by programs from other makers (this is in addition to the APIs already part of the settlement). Much of the world's most important information is trapped in these proprietary formats, making it very difficult for customers to switch to competitors even if competitors offer better functionality and lower prices.
2. There must be no exceptions for what interfaces must be publicly documented. For example, the exception for "security" issues must be removed. Indeed, security-related issues require the *most* public scrutiny.
3. Any Microsoft networking protocols must be published in full and approved by an independent network protocol body, and be re-implementable without royalty fee. This would prevent Microsoft from seizing de facto control of the Internet.
4. Since "open source software" is one of Microsoft's prime competitors, any judgment must ensure that open source software developers have equal access to such information, without interference in the form of royalty payments, non-disclosure agreements, and other schemes to prevent consumer choice.
5. Microsoft's claims of "Intellectual Property Rights" (IPR) must not be allowed to justify continued illegal activity. If such rights are used to continue illegal activity, then those rights must be forfeited.

Also, in addition to the current judgment, sales channels must be free to sell competing products. The proposed judgment tries to make this possible, but it does not go far enough. Thus, in addition to the proposed judgment:

6. Microsoft's product prices must be strictly based on volume (to prevent Microsoft from "punishing" vendors who sell competing products). There are some vague words about "not punishing" but their meaning and enforcement is not sufficiently clear.
7. Microsoft products must be extra-cost options in the purchase of new computers, so that users who do not wish to purchase Microsoft products are not forced to do so. If I choose to not use Microsoft's products, then Microsoft should not get a cut of my money. I want the freedom to *not* pay Microsoft.
8. Microsoft's agreements with resellers must be made and kept public, to prevent secret agreements from damaging the public.

A capitalistic economic system only works when there is competition. When a company can gain and routinely exploit a monopoly to eliminate competition in other fields, the result is a loss of choice and quality for all. Without being reigned in, Microsoft might someday completely control essentially all communication media, a dangerous situation for any democracy. Microsoft has already tried to limit freedom of speech through its existing control (e.g., at one time Microsoft's Passport prevented their customers from publishing negative comments about Microsoft, and their database licenses prevented users from publishing benchmarks showing Microsoft product performance). Allowing a single company's products to so dominate an industry also presents a grave computer security risk – any flaw in their products opens the entire country to attack. Since there is currently little competition, there's little incentive for Microsoft to improve many of its products. As documented by computer security experts (such as those in "Bugtraq"), Microsoft has a history of claiming to secure their products yet continuously releasing poorly-secured products.

Allowing Microsoft to continue flagrantly disregarding the law is dangerous, and in the long run may pose more danger to our country than the terrorists we are fighting now. Failing to impose a strong judgment may send a disturbing message – it suggests that we are no longer a country of laws, since nothing important will happen if those laws are repeatedly broken. Please, do not let this proposed judgment be a stain on this court. I urge you to require a real final judgment that actually inhibits future illegal activities.



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